IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 498

EMIL J. SONDERLICK,
Plaintiff-Petitioner,

against

THOMAS H. SIMMONS, *et al.,*
Defendants,

THOMAS J. HALLINAN,
Defendant-Respondent.

PETITION FOR REHEARING.

EMIL J. SONDERLICK,
Petitioner.

by JACOB W. FRIEDMAN,
Attorney for Petitioner.

MARK SERVICE, BARCLAY 7-2180

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TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully prays this Court to reconsider its determination made on November 6th, 1944, which denied his petition for a writ of certiorari to the Appellate Division of the Supreme Court of the State of New York, First Department, to review a judgment of that Court affirming a summary judgment in favor of defendant-respondent Hallinan dismissing the complaint on the merits. On December 1st, 1944, the Chief Justice signed an order extending to December 26th, 1944, the time of your petitioner to file a petition for rehearing.

Your petitioner respectfully submits that there is involved in this case a serious question of constitutional law which should be passed upon by the Court, and that as a result of the adverse determinations rendered up to this point he has been deprived of the title to valuable realty without a trial, on summary motion and solely on

the basis of an adjudication in an action to which neither he nor any one with whom he was in privity was a party.

Reduced to its barest essentials, the action is one wherein your petitioner sought through the standard remedy of ejectment to regain possession of an apartment house of which he is the fee owner. Defendant Hallinan was a receiver appointed in an action to which your petitioner was not a party, which action, as has been aliter adjudicated, did not even affect the title to the realty.

Although the remedy followed by your petitioner was strictly in accordance with law, defendant Hallinan succeeded in obtaining a summary judgment on motion and petitioner was never so much as accorded a trial. The basis of this extraordinary decision was in substance two former adjudications. One of these was in an action to which your petitioner was not a party; moreover it was the action which was held not to involve the title to the realty. The other action was one in which your petitioner was a defendant, but its only possible effect dealt with the title to an undivided one-half interest in the property. Therefore, your petitioner at all relevant times was the undisputed and continuous owner of not less than a one-half interest in the property. Being wrongfully deprived of the possession, he sought to vindicate his rights by ejectment, and his case has been thrown out without a trial.

We do not propose to repeat herein the legal points heretofore argued which establish the technical correctness of your petitioner's position. That a high-handed course of legal proceedings has been invoked to take away from him his property seems abundantly clear. This Court declared in *Postal Telegraph-Cable Co.* v. *Newport*, 247 U. S. 464, that it would not sanction the extension of the doctrine of *res adjudicata* so as to give conclusive force to a judgment where the party presently named never had the opportunity to be heard, either through

himself or through one to whom he was privy. The Court then said that such a determination was violative of the Fourteenth Amendment. Your petitioner urges that an analysis of the proceedings herein will demonstrate that your petitioner has been subjected to a most egregious violation of this salutary doctrine.

Nothing that was adduced by the respondent detracted in the slightest degree from the force or efficacy of the arguments advanced.

Your petitioner is thoroughly appreciative of the likelihood that in these times the Court is confronted with numerous questions arising out of great war in which the republic is engaged. Nevertheless, the Court has unmistakably committed itself to the view that none of the Constitution's provisions "can be suspended during any of the great exigencies of government" (*Ex parte Milligan*, 4 Wall. 2). It is sorry comfort to an individual to know that the Constitution accords him divers fundamental rights, if when one of them is grossly invaded he cannot have the relief which the situation demands. Your petitioner feels that upon fuller consideration the Court will appreciate the merit of his position and decide that the case is deserving of plenary review.

Conclusion.

Petitioner respectfully urges this Court to rescind the determination heretofore made denying the writ of certiorari and that it grant such writ to the aforesaid Appellate Division of the Supreme Court to review the judgment involved.

Respectfully submitted,

JACOB W. FRIEDMAN,
Attorney for Petitioner-Appellant.